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SUMMARY RECORD OF THE 1406th MEETING

Held at Headquarters, New York,
on Friday, 31 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of the United States of America (continued) (CCPR/C/81/Add.4)

1. At the invitation of the Chairman, Mr. Shattuck and Mr. Harper (United States of America) took places at the Committee table.

2. The CHAIRMAN said that he wished to make a few comments on the overall issue of reservations, addressing in part some of the concerns of the United States about the Committee's general comment 24.. When the Vienna Convention on the Law of Treaties had been concluded, States parties, in formulating the provisions on reservations, had never had in view multilateral human rights treaties designed to create an international framework for the protection of the rights of individuals, irrespective of their nationality. Those treaties differed significantly from the traditional international agreements whose purpose was the inter-State exchange of bargained-for benefits. General comment 24 carefully explained (CCPR/C/21/Rev.1/Add.6, para. 17) the difficulties that arose in the application of the Vienna Convention provisions for the handling of reservations to the Covenant. The Committee believed that the States parties themselves, through their conduct, had affirmed a lack of interest in making the traditional Vienna Convention system work for human rights treaties.

3. The conclusions reached by the Committee were essentially the same as those acknowledged by the institutions of the inter-American and European regional human rights systems and reflected contemporary international human rights law. The Committee affirmed that it was not its position that any reservation to a substantive provision necessarily contravened the Covenant's objects and purposes. It agreed that the best guarantee of human rights was for those rights to be reflected in internal law, and its task was to ensure that they were. The Committee's interpretations as set out in its general comments were not strictly binding, although it hoped that the comments carried a certain weight and authority. In the Committee's experience, States parties often wished to give careful consideration to them for that reason.

4. According to general comment 24, a reservation to the duty to provide a remedy was incompatible with the objects and purposes of the Covenant. That, however, did not mean that the Covenant must be enacted as domestic law or made self-executing. Although doing so might indeed afford the most secure guarantee, the essential requirement was that domestic law must reflect the substantive rights of the Covenant and that guaranteed and effective remedies should be available for violations of such rights - whether they were articulated as Covenant rights, constitutional rights, statutory rights or common law rights.

5. The Committee hoped that its careful formulation as to what reservations might be compatible with the objects and purposes of the Covenant would be helpful to States parties. General comment 24 did not equate non-derogability with contravention of object and purpose. As to the legal consequence of a State party entering a reservation that was, in the Committee's view, contrary to the objects and purposes of the Covenant, the Committee again believed that the general comment essentially reflected current thinking in other comparable bodies.

6. Mr. LALLAH said that the initial report of the United States of America was excellent in so far as the implementation of the Covenant at the federal level was concerned, but did not provide very much information about the situation at the state and grass-roots levels. It was encouraging to learn about the administrative arrangements envisaged to involve states in that effort. Such arrangements would help states determine how best to carry out the obligations undertaken on their behalf and would bring together all the groups involved in ensuring the enjoyment of human rights. In that connection, he hoped that non-governmental organizations would be informed about such arrangements so that they could better help the reporting State implement the Covenant.

7. It would be useful to know how justice was administered in rural areas. According to reports, in certain areas there were approximately 50,000 limited jurisdiction judges who lacked any formal legal training. The administrative arrangements referred to earlier would be most helpful in protecting human rights at the local level.

8. He was grateful for the information provided by the delegation on the way in which the right to vote was guaranteed. It would also be useful to know the extent to which the right to stand as a candidate was ensured. He was not familiar with the amount of wealth necessary in order to be able to enjoy that right in the United States. No democracy functioned very well unless the people were given the fullest possible opportunity to choose candidates and to stand as candidates.

9. It had been very interesting to hear about the steps taken to prevent discrimination in employment and housing, eliminate discriminatory practices in education and ensure that persons facing criminal prosecution were given competent legal counsel. He was also very glad to note that steps had been taken to ensure that, under the law, no pregnant women would be executed. Lastly, it was gratifying to note the very responsive and cooperative attitude displayed by the reporting State in engaging in such a constructive dialogue.

10. Mr. POCAR expressed satisfaction with the very competent replies provided by the delegation to the Committee's questions. He agreed totally with the reporting State's interpretation of article 2 of the Covenant: it was not necessary to incorporate the Covenant as such into domestic legislation. Nevertheless, measures must be taken to ensure that the rights provided for were fully protected. The delegation had confirmed that the Government would monitor the situation and adopt any necessary measures to that end. It was gratifying to hear that, where distinctions concerning non-discrimination were concerned, the legitimate government objective had to be in accordance with the Covenant.

That should be made clear to all the courts in dealing with questions of non-discrimination.

11. A reservation should not concern a Covenant right that was protected under peremptory rules of customary law. Referring to the death penalty for juveniles, he stressed the need to take into consideration the current practice in most States and the fact that the execution of juveniles might be considered to be in contradiction to such rules. In addition, article 6 of the Covenant must be viewed within the context of the other articles, particularly article 24, which stated that every child should have the right to such measures of protection as required by his status as a minor. Accordingly, a reservation to article 6 without a reservation to article 24 was contradictory. The reporting State should take that into account when considering the possible withdrawal of its reservation.

12. Lastly, he noted with satisfaction the statement by the reporting State that the Government would take full responsibility for the implementation of the Covenant and was ready to adopt all necessary measures to encourage states to bring their legislation into accordance with it.

13. Mr. MAVROMMATTIS expressed satisfaction with the very competent manner in which the reporting State had participated in the dialogue with the Committee. He fully supported the statement by the Chairman concerning reservations. The reporting State should consider the disparity between the protection of rights afforded by the federal Government and that provided by the states, particularly with regard to the decriminalization of homosexual practices in private.

14. Particular attention should be given to the right to life, especially with regard to methods of execution and the use of firearms. While the Covenant did not prohibit the bearing of arms, it did impose an obligation on States parties to protect life. One way to do so was to restrict the possession and use of firearms by those who bore them legitimately. With regard to the long periods of time spent on death row, the reporting State should consider improving the situation by means of shorter and stricter limits for the lodging of appeals. The question of double jeopardy should also be looked into. Lastly, he stressed that the election of judges for renewable fixed terms was likely to be open to abuse.

15. Mr. PRADO VALLEJO expressed satisfaction with the magnificent dialogue that had taken place with the United States delegation. It had been reassuring to hear that the federal Government was prepared to enact new laws and cooperate with states in order to ensure that the rights set out in the Covenant were protected. He hoped that the reporting State would ratify the Optional Protocol in order to further enhance that protection. The right to self-determination was enshrined in the human rights covenants and could not be limited. The declaration by the reporting State that that right was non-self-executing implied a certain limitation.

16. He wished to know what recourse the refugees held at the Guantanamo naval base if their rights were violated, what law applied to them and what mechanisms existed to protect their rights under the Covenant. The reporting State should also provide information on measures to tackle the problems of racial

discrimination referred to in the report of the Special Rapporteur on Racial Discrimination.

17. Mr. KRETZMER expressed satisfaction with the meticulous manner in which the representatives of the United States had replied to the questions raised by the Committee. There was still a disparity between the protection of the rights provided for under the United States Constitution and the protection of those guaranteed by the Covenant. He was particularly concerned about three areas. The first related to the procedures for examining the individual cases of excludable aliens. In most cases, those aliens were in the United States, although the courts did not regard them as having legally entered the country. The distinction made with regard to such aliens resulted in a disparity between the due process afforded to them and the normal due process provided for under the Constitution. The reporting State should consider the possibility of applying the normal rules of due process to those aliens.

18. The second periodic report should deal more fully with the further issue of the indefinite confinement of excludable aliens, giving statistics specific to them and not simply on aliens in general. Even though American jurisprudence had in the past upheld the legality of the indefinite confinement of persons who could not be deported, that was inconsistent with the Covenant's injunction in article 9, paragraph 1, that no one should be subjected to arbitrary arrest or detention. Furthermore, article 9 must be seen as relevant to the Guantanamo refugees. In the wider context of the application of the Covenant to all individuals within the territory of a State party and subject to its jurisdiction, the United States took the position that the two conditions of territory and jurisdiction were cumulative and did not apply to persons being held in Guantanamo. It seemed to him, however, that Guantanamo must, at least for the purposes of the Covenant, be regarded as fulfilling both conditions, for otherwise it would be an enclave whose inhabitants had no legal status with respect either to Cuba or to the United States. The United States should bear in mind the implications of its position for other countries.

19. With regard to prisoners' rights, he urged the Government to reconsider its policy on allowing access by male staff to women's quarters, for he was not convinced that effective mechanisms were in place to prevent sexual abuse. Also, it had been explained to the Committee why the super-maximum security prisons existed, but the Committee had not been told whether the federal or state Governments were complying with article 10. The United States should review conditions in such prisons to ensure that they satisfied both security needs and the standards of the Covenant. In that connection, he wondered how it was that some of those on death row in such prisons were not security cases.

20. Although the practice was prohibited by the federal Government, it was not clear whether any of the states permitted surrogate consent to medical experiments.

21. Mr. BRUNI CELLI observed that it was still difficult to accept what he saw as the subjective affirmations in paragraph 139 of the report that the majority of citizens through their freely elected officials had chosen to retain the death penalty and that such a policy represented the majority sentiment of the country. There had been no real debate on that issue during electoral campaigns

and no true measurement of the electorate had been taken. Yet even if those affirmations were accurate, should such a sensitive issue be decided by majority rule? Certainly the majority of non-governmental organizations in the country, and the American Bar Association itself, had come out against the death penalty, and the international community and international treaties were all moving in the direction of its abolition. The execution of minors, to which the United States reserved the right in its second reservation, was particularly troubling, both in itself and because it violated article 37 (a) of the Convention on the Rights of the Child, to which the United States was a signatory even if it had not yet ratified it. Its position on that issue would also make it the only country in the hemisphere prevented from acceding to the American Convention on Human Rights.

22. Mrs. MEDINA QUIROGA commended the United States representatives for the breadth of legal knowledge with which they had regaled the Committee. The United States had a long tradition of democracy and protecting human rights, and its standards were often higher than international standards. The Committee was encouraged by its willingness none the less to draw upon international standards when they were higher than its own. One disadvantage in being such a large country lay in having to account for all its components, including the state Governments. The reassurance that there would be a continuing review not only of federal statutes but also of state laws and practices was welcome. It would not be enough to request information from state attorneys-general, however; the Government needed to find out what was happening, even in rural communities, and, to that end must listen to non-governmental organizations.

23. International human rights norms were weapons with which individuals could defend themselves against government interference or against the exercise of power by majorities. Democratic majority choice could not therefore be used to justify policies that were in violation of the Covenant - at best it could be only an explanation. Governments had an obligation to lead their people and win them over to higher standards.

24. She still had concerns regarding the treatment of women in prisons, and especially the law's seeming allowance for the possibility of unintentional violations of privacy by male prison guards. With regard to medical experimentation, it should be noted that New York State regulations did permit experimentation on children without their parents' consent. Concerning the limited political rights of the inhabitants of Washington, D.C., she still wished to know how such a situation had come about.

25. She hoped that the country's non-governmental organizations and government organs would see the Committee as a source of support in their struggle to educate the people about their civil and political rights so that better democratic choices could be made in the future.

26. Mr. EL-SHAFEI commended the Government for the whole series of recently enacted laws offering still greater protection of rights, especially the 1994 legislation on tribal self-government and against violent crime.

27. He intended to give more careful thought to the further explanations given regarding the first United States declaration, on the non-self-executing

character of the Covenant, and its fifth understanding, regarding the limits on federal jurisdiction over the implementation of the Covenant inherent in the federal/state structure. Both issues would no doubt come up again.

28. The United States must repeal its legislation permitting the execution of juveniles under 18. Such a practice would prevent the United States from ultimately ratifying the Convention on the Rights of the Child.

29. Under existing law, according to Human Rights Watch and the American Civil Liberties Union, the Government was powerless to intervene in response to ongoing police brutality in the country even where it was unconstitutional, except under federal criminal civil rights statutes. The laws in that regard as well must be amended to allow more effective protection of all in the United States against such cruel, inhuman or degrading treatment.

30. The affirmative action programmes which the United States had established in employment, education and other fields were now coming under attack, and it would be unfortunate if they started to erode. As a party to the Covenant and the International Convention on the Elimination of All Forms of Racial Discrimination, the United States was under an obligation to continue to attempt to rectify past injustice.

31. He had been gratified to hear that the Government would regularly review its laws in the light of the Covenant and its reservations, understandings and declarations in the light of future developments.

32. Mr. KLEIN said that he very much looked forward to the second periodic report, which should include information on state as well as federal law and practice. The problem of violence in all parts of society - a world-wide problem - needed discussion in greater depth. The question of the theoretical duty of states to protect human rights should also be given the kind of consideration that the signatories to the European Convention on Human Rights were giving it.

33. The United States representatives had consistently focused on the United States Constitution in their answers to the Committee, reflecting their Government's view that the Constitution already met all its obligations under the Covenant, with allowance made for the reservations. The United States was right to be proud of its Constitution, including the Bill of Rights, but it was not the only decisive norm. The whole point of signing an international treaty was to enable a country to open up to ideas and trends from the outside. Articles 1 and 27 of the Covenant, for instance, could encourage a greater willingness to grant federal recognition to Indian tribes, for there was no reason why Congress should be entitled to extinguish tribal rights. Furthermore, the imposition of the death penalty on minors perhaps did not deserve the unyielding defence it was being given, and certain methods of execution that no longer seemed humane should perhaps be reconsidered. The toleration of racial hatred in the name of freedom of speech could be rethought, as could be the attitude that the United States accepted international obligations only on a strictly territorial basis. The Constitution did not insist on any of those points, and there was room for amendment if the Government was willing.

34. The democratic argument that the people did not want a change had been put forward. But it was precisely the constitutional thinking of the United States which had taught the world that there were limits to the will of the majority. Human rights in particular could not always be left to the discretion of majorities. The signing of the human rights treaties must represent the Government's recognition of its duty to guide its people and strive for change wherever needed. The world needed the United States to lead the way in the promotion and protection of human rights, and it would do so best by fully accepting international standards and its own international human rights responsibilities.

35. Mr. FRANCIS said that although all articles of the Covenant were equally important, those relating to life and death had a particular urgency. He reiterated his firm belief that there was a sufficient consensus within the reporting State to establish 18 years as the minimum age for the imposition of the death penalty. That the way was clear for it to take that step was evident from pages 3 and 4 of its report. The United States should assume a leadership role in the field of human rights.

36. He hoped that the reporting State would take the necessary steps to ensure that forced labour was eliminated. With regard to the prison system, although some impressive gains had been made in the area of rehabilitation, abundant information provided by non-governmental organizations showed that serious problems remained.

37. He was gratified by the fruitful exchange that had taken place between the delegation and the Committee and he was confident that the reporting State would take due account of members' comments.

38. Mr. BHAGWATI welcomed the wealth of legal information provided by the reporting State and commended its collaborative relationship with various non-governmental organizations. He hoped that the second periodic report would indicate the extent to which the reporting State's efforts to guarantee the rights embodied in the Covenant had been successful.

39. He remained unconvinced of the validity of the United States reservation to article 6 of the Covenant and recalled that the Committee had stated in general comment 24 that reservations that offended peremptory norms were incompatible with the object and purpose of the Covenant. Article 6 established standards which were peremptory in nature, and the right to life was the most precious right protected by the Covenant. He hoped that the reservation would be withdrawn by the time the reporting State submitted its second periodic report. He agreed with Mrs. Medina Quiroga that a defence of the reservation which relied on the democratic choice of the people could not be a justification, but was at best an explanation. The United States Government should take the lead in educating the public regarding the importance of honouring the commitments assumed upon ratification of the Covenant.

40. He had been pleased to learn that state-funded legal aid schemes enabled indigent people to enforce their rights under the Covenant. He welcomed the fact that all sectors of the federal and state Governments would be involved in efforts to implement the rights conferred by the Covenant. That could best be

accomplished through programmes to educate the public, administrators and members of the judiciary, and he was pleased to note that information on the rights conferred by the Covenant would be incorporated in the curriculum of the Federal Judicial Center.

41. An ongoing review of federal and state legislation would make it possible to monitor the extent to which such legislation was compatible with the obligations undertaken under the Covenant. He wondered if the Supreme Court had taken a position as to whether long periods spent on death row following the termination of the appeal process could be considered cruel, unusual and degrading punishment.

42. The reporting State, which was a world leader in the protection and promotion of human rights, would considerably enhance its moral stature in the community of nations by withdrawing its reservations and complying with all the international standards found in the Covenant.

43. Mr. ANDO said that he appreciated the detailed and frank replies which the reporting State had provided to virtually all questions raised during the discussion. He agreed that the fact that a substantial amount of information concerning a State party's official report emanated from non-governmental organizations was an indication of the openness and democratic character of that State.

44. He had been pleased to learn that the declaration regarding the non-self-executing character of the Covenant did not prevent federal or state courts from referring to the provisions of the Covenant, and he hoped that nothing would be done to discourage the courts from exercising their discretion in that regard. He had taken note of the fact that the question of the continued imposition of the death penalty on minors under 18 years of age was not yet settled and that discussion of the issue would continue. He agreed with Mr. Pocar that article 24, paragraph 1, of the Covenant, on special measures of protection for minors, was relevant in that regard.

45. With regard to the regulation of weapons and to the sale of handguns in particular, it was true that article 6 of the Covenant did not explicitly obligate States parties to prohibit arms sales in domestic markets; nevertheless, it was implicit in that provision that no public authority or private entity should arbitrarily interfere with the right to life. Accordingly, steps should be taken to prevent such weapons sales.

46. In the final analysis, the validity of a particular law depended on the wish of the population affected by it. The strength of the reporting State derived from the multiplicity of its cultures, and diversity of opinion was a healthy indication of that multiplicity. Nevertheless, he wished to emphasize that the Covenant established a minimum necessary standard that must be observed.

47. Mrs. EVATT commended the reporting State on its comprehensive and frank replies. She had been pleased to learn that serious thought was being given to establishing appropriate machinery, institutions and processes to undertake an ongoing review of federal and state laws and practices with a view to assessing

their compatibility with the Covenant. The commitment to consider corrective legislation where needed also was welcome. It was to be hoped that regular consultation with the states would, where indicated, extend beyond the attorneys-general. Consideration should be given to entrusting the responsibility for the consultation process to a permanent federal agency or office. She had been pleased to learn that judges would be drawn into that process, and she hoped that questions of gender bias would be addressed and that the Government would encourage judges to refer to the Covenant in court submissions. She also had been pleased to learn that the reporting State's initial report was being reprinted and put on the Internet.

48. She hoped that the conformity review envisaged for federal laws would be extended to the states as well and that other ideas put forward would be given proper consideration in due course. She agreed with the United States delegation that blanket solutions were not necessarily appropriate and that state compliance must be evaluated on a case-by-case basis. Some of the possible difficulties could be overcome if the Supreme Court determined that particular provisions of the Covenant were in fact self-executing. She wished to emphasize that the reporting State was bound to give effect to the Covenant and to take action where deficiencies in federal and state law and practice had been identified. Interested non-governmental organizations should continue to play an important role in bringing the appropriate issues to the attention of the Government.

49. The United States delegation had indicated at the preceding previous meeting that economic distress was one difficulty affecting the implementation of the Covenant. Accordingly, the impact of poverty on the enjoyment of civil and political rights should be taken into account in the second periodic report.

50. The Covenant was a living document that must be able to meet the needs of a changing world, just as the United States Bill of Rights had proved to be. While the Committee respected and supported the democratic process in the reporting State and elsewhere, it must consistently apply basic human rights standards to all States, and those standards could not be subverted, even by the democratic process. She agreed with Mrs. Medina Quiroga and Mr. Bhagwati in that regard, and referred in particular to the reporting State's reservation to article 6 of the Covenant with respect to the imposition of capital punishment on minors.

51. Mr. SHATTUCK (United States of America) reiterated the importance which his delegation attached to its appearance before the Committee and underscored his Government's commitment to implementing the Covenant. He also commended interested non-governmental organizations for their contribution to the promotion of an open process for the implementation of human rights obligations.

52. The CHAIRMAN emphasized the leadership role which the United States of America played in the promotion and protection of human rights, thanked the delegation for its cooperation and expressed his appreciation for the contribution made by non-governmental organizations.

The meeting rose at 5.55 p.m.